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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

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17 UNITED STATES OF AMERICA,)
18 Plaintiff,) 2:04-CR-153-RLH-PAL
19 vs.)
20) MOTION TO CONTINUE
21) SUPERVISED RELEASE
22) REVOCATION HEARING
23 ROBERT WAYNE ERVIN,) (First Request)
24 Defendant.)
25 _____
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17 COMES NOW the United States, by DANIEL G. BOGDEN, United States Attorney,
18 District of Nevada, and Kimberly M. Frayn, Assistant United States Attorney, representing the United
19 States of America, Plaintiff, and hereby moves that the Supervised Release Revocation Hearing in the
20 above-captioned cases currently scheduled for January 7, 2011, at the hour of 10:30 p.m., be vacated
21 and continued to a date and time to be set by the Court, but not earlier than January 18, 2011, for the
22 following reasons and for good cause shown:

23 1. Counsel for the government is scheduled to undergo a medical procedure on
24 Friday, January 7, 2011 at 10:00 a.m. and will be on medical leave for a short but currently
25 indeterminate period thereafter. Accordingly, counsel for the government will not be available to
26 attend the January 7, 2011 revocation hearing which is set for 10:30 a.m. Given the government
counsel's lengthy history, since 2004, with this defendant, the United States would be unduly

1 prejudiced if it is not granted a continuance so that it may have continuity of counsel at the revocation
2 hearing.

3 2. Additionally, the allegations contained in the US Probation Office's petition
4 seeking to revoke the defendant's release, include allegations that the defendant has committed
5 multiple new law violations, including crimes of violence against the person of another. Attempts
6 have been made to resolve the matter by agreement between the parties, but to date, such attempts
7 have not been successful. The undersigned government counsel anticipates that settlement will not
8 be reached and that a half-day contested hearing, with testimony from a number of witnesses, will
9 need to be held in order for the Court to determine whether the defendant's release should be
10 revoked.

11 3. On or about December 28, 2010, the defendant was temporarily detained
12 pending the January 7, 2011 revocation hearing. Although the defendant is in custody, he will not
13 be unduly prejudiced by the short continuance requested herein. Defense counsel has advised that,
14 while counsel does not believe entering a stipulation to continue the hearing is in her client's best
15 interest, defense counsel did authorize government counsel to advise the Court that defense
16 counsel does not oppose the requested continuance.

17 4. US Probation Officer Oswald was out of the office on leave until the
18 beginning of this week. Government counsel, Kimberly M. Frayn, received copies of the police
19 reports yesterday from Officer Oswald, and is in the process of gathering and producing these
20 reports and any additional discovery to defense counsel. Accordingly, counsel for the defense may
21 need additional time to review the discovery and conduct any follow up investigation deemed
22 necessary.

23 5. This is the first request for a continuance of the Defendant's revocation
24 hearing. The brief continuance requested herein will not result in undue delay and will not overly
25 prejudice the Defendant.

1 . WHEREFORE, the government respectfully prays that this matter be continued to a
2 date and time convenient to the Court, but not earlier than January 18, 2011.
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4 DATED this 5th day of January, 2011.

5 Respectfully submitted,

6 DANIEL G. BOGDEN
7 United States Attorney

8 /s/ Kimberly M. Frayn
9 KIMBERLY M. FRAYN
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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5 UNITED STATES OF AMERICA,)
6 Plaintiff,) 2:04-CR-153-RLH-PAL
7 vs.)
8) ORDER
9 ROBERT WAYNE ERVIN,)
10 Defendant.)

Based on the Government's pending motion to continue the supervised release revocation hearing, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Supervised Release Revocation Hearing in the above-captioned cases currently scheduled for January 7, 2011, at the hour of 10:30 p.m., be vacated and continued to January 18, 2011 at 1:30 p.m., Courtroom 6C.

DATED this 6th day of January, 2011.

Roger L. Hunt
Roger L. Hunt
Chief United States District Judge